

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WISCONSIN RESOURCES
PROTECTION COUNCIL, CENTER FOR
BIOLOGICAL DIVERSITY, AND
LAURA GAUGER,

Plaintiffs,

Case No. 11-cv-45

v.

FLAMBEAU MINING COMPANY,

Defendant.

**DEFENDANT FLAMBEAU MINING COMPANY'S
PROPOSED SPECIAL VERDICT**

Defendant Flambeau Mining Company ("FMC") respectfully submits the following proposed Special Verdict.

QUESTION NO. 1: Have events subsequent to the filing of this lawsuit made it absolutely clear that the Clean Water Act ("CWA") violations alleged in the Complaint could not reasonably be expected to recur?

YES _____

NO _____

If the Court answers Question No. 1 "No," it should proceed to Question No. 2. If the Court answers Question No. 1 "Yes," this verdict is for the Defendant, the Court should not answer any further questions on this verdict form and should sign and enter this verdict.

QUESTION NO. 2: Did the Biofilter overflow discharge into a wetland?

YES _____

NO _____

If the Court answers Question No. 2 “Yes,” it should proceed to Question No. 3.

If the Court answers Question No. 2 “No,” it should proceed to Question No. 4.

QUESTION NO. 3: Does the wetland into which the Biofilter overflow discharged meet the significant nexus test as established in *Rapanos v. United States*, 547 U.S. 715 (2006)?

YES _____

NO _____

If the Court answers Question No. 3 “Yes,” it should proceed to Question No. 5.

If the Court answers Question No. 3 “No,” this verdict is for the Defendant, the Court should not answer any further questions on this verdict form and should sign and enter this verdict.

QUESTION NO. 4: Did the Biofilter overflow discharge directly into Stream C at a location where Stream C is a Water of the United States?

YES _____

NO _____

If the Court answers Question No. 4 “Yes,” it should proceed to Question No. 5.
If the Court answers Question No. 4 “No,” this verdict is for the Defendant, the Court should not answer any further questions on this verdict form and should sign and enter this verdict.

QUESTION NO. 5: On what days did the Biofilter overflow discharge directly into a Water of the United States?

Proceed to Question No. 6.

QUESTION NO. 6: Did Defendant Flambeau Mining Company (“FMC”) violate the CWA by discharging pollutants into a Water of the United States in violation of 33 U.S.C. § 1311(a)?

YES _____

NO _____

If the Court answers Question No. 6 “Yes,” it should proceed to Question No. 7.
If the Court answers Question No. 6 “No,” this verdict is for the Defendant, the Court should not answer any further questions on this verdict form and should sign and enter this verdict.

QUESTION NO. 7: Should FMC be enjoined from discharging pollutants from the Biofilter to a Water of the United States unless authorized to do so under a permit issued pursuant to section 402 of the CWA?

YES _____

NO _____

Proceed to Question No. 8.

QUESTION NO. 8: Should FMC be assessed civil penalties?

YES _____

NO _____

If the Court answers Question No. 8 “Yes,” it should proceed to Question No. 9.

If the Court answers Question No. 8 “No,” it should proceed to Question No. 10.

QUESTION NO. 9: What amount of civil penalties should be assessed against FMC?

\$ _____

Proceed to Question No. 10.

QUESTION NO. 10: Does the Court have the authority to require FMC to fund a Supplemental Environmental Project?

YES _____

NO _____

If the Court answers Question No. 10 “Yes,” it should proceed to Question No. 11. If the Court answers Question No. 10 “No,” it should sign and enter this verdict.

QUESTION NO. 11: Should the Court require FMC to fund a Supplemental Environmental Project?

YES _____

NO _____

If the Court answers Question No. 11 “Yes,” it should proceed to Question No. 12. If the Court answers Question No. 11 “No,” it should sign and enter this verdict.

QUESTION NO. 12: Indicate the amount of the fund for the Supplemental Environmental Project below:

\$ _____

Sign and enter this verdict.

Dated _____

United States District Judge
Honorable Barbara B. Crabb